

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ALBERT M. ARONOWITZ
ATTORNEY AT LAW
22 EAST 40TH STREET
NEW YORK, N. Y. 10016
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October 28, 1974

Office of Federal Employees' Compensation
1515 Broadway
New York, N.Y. 10036

Re: Louis Teplitsky
File No. A2-102986

Att: Mr. Arnold I. Bernstein,
Supervisory Claims Examiner

Dear Mr. Bernstein:

I have considered your letter of August 22, 1974 and in the light of it have reviewed with the claimant all of the proceedings heretofore had herein before your office and elsewhere.

I do not agree that the decision made to remove Mr. Teplitsky from your rolls, effective September 1, 1965, was correct.

While, ordinarily, it is standard procedure that a claimant cannot collect from the Office of Federal Employees' Compensation and another Federal Agency, (in this case Veterans Administration) for the same disability, this is not applicable to this claimant's case. This claimant is 100% disabled before the Veterans Administration for a different disability than that for which he is disabled before your agency.

The heart of the Teplitsky claim is that his disability at the Veterans Administration is a service connected nervous or emotional condition which has been independently evaluated at 100% disabling for symptoms and findings which are directly attributable to his military service. In this regard, I refer you to the attached letter from the Veteran's Administration addressed to Senator Buckley dated May 3, 1974 and particularly the part of the letter which I have underlined.

The findings at the Office of Federal Employees' Compensation were that Teplitsky sustained a left groin injury on December 11, 1963. This groin injury was in the same area and aggravated a pre-existing condition for which he had had a hernioplasty in 1949. It was this condition and any sequellae of this

Office of Federal Employees' Compensation

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condition which resulted in the decision by your office on December 27, 1966 that, for compensation purposes, Mr. Teplitsky was 100% totally disabled. As you are well aware, that decision restored his compensation as of November 10, 1964 through September 9, 1965. It is Mr. Teplitsky's contention that the disability resulting from the left groin injury has continued and that his compensation payment should continue right up to the present date.

As I stated above, so far as your office is concerned, Mr. Teplitsky contends that it is not the nervous or emotional condition which is disabling. He is disabled at your office as a result of a civilian incurred physical injury at the Post Office. This is a physical injury and it is the physical injury which is disabling to him. It is because of this physical injury that Mr. Teplitsky has been unable to secure employment.

It should be pointed out at this juncture, that after his hernioplasty in 1949 and for 13 consecutive years, this claimant held down 2 jobs. During the Summer, he worked as a bus-boy at the Lido Beach Hotel and during the rest of the year, he worked as a part time mail handler for the U.S. Post Office. He continued in this capacity and would have continued indefinitely if it had not been for the unfortunate physical trauma of December 11, 1963. As an indication of the will of this claimant to pursue his gainful employment, it should also be noted that from December 11, 1963, (the date of the injury) until March 9, 1964, the claimant worked with a great deal of pain and difficulty at the Post Office because the U.S.P.H.S. found him to be fit for duty. It was only on March 9, 1964, when he could no longer continue his work that the U.S.P.H.S. found him to be disabled and his claim for disability runs from that date.

On the basis of all of the foregoing, it is respectfully requested on behalf of Mr. Teplitsky that you immediately place him back on the rolls, effective September 10, 1965, and that you immediately pay him 100% disability compensation due him retroactive to March 9, 1964, regardless of any other payment being made by any other agency for a different injury incurred in a different service.

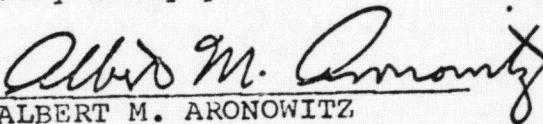
Office of Federal Employees' Compensation

Att: Mr. Arnold I. Bernstein

October 28, 1974

Just one further note. You stated in your letter that legal proceedings have upheld your decision. I do not agree. Actually, all the Court decided was that it had no jurisdiction to overturn the Bureau of Employees' Compensation's ruling. The Court never really went into the merits of Mr. Teplitsky's arguments.

Very truly yours,


ALBERT M. ARONOWITZ

AMA/sc
Encl.1

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April 2, 1975

Mr. Louis Teplitsky
2136 Wallace Avenue
Bronx, N.Y. 10462

Re: Louis Teplitsky
File Number of Office of
Workmen's Compensation Programs:
A2-104986

Dear Mr. Teplitsky:

This will formally confirm what I have advised you by telephone concerning the present status of my applications on your behalf before the U.S. Department of Labor in the above matter.

I wrote a letter to the Office of Federal Employees' Compensation under date of August 19, 1974 inquiring of the Examiner in Charge what he would require in order for you to be entitled for benefits under the law.

Under date of August 22, 1974, I received a reply from the Examiner indicating that you would be required to make an election between the V.A. benefits and benefits under the Compensation Law.

Thereafter, I reviewed this case with you, and, as a result, wrote a letter to the Office of Federal Employees' Compensation under date of October 28, 1974 setting forth your contention that your disability with the V.A. was a different disability than that resulting from the injuries sustained on your job. I cited facts and referred him to material which I felt was pertinent. On the basis of that contention, I requested him to immediately place you back on the rolls, effective September 10, 1965 and that he pay you 100% disability compensation retroactive to March 9, 1964.

I did not receive any reply to this letter and under date of December 10, 1974 I wrote again to the O.F.E.C. requesting them to review the matter in the light of my application of 10/28/74.

Under date of January 23, 1975, I received a short note from the Supervisory Claims Examiner indicating that for my information accepted disability INCLUDES (sic) psychiatric condition.

ALBERT M. ARONOWITZ

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Mr. Louis Teplitzky

April 2, 1975

I did not consider this to be an answer to my 3 page application letter of 10/28/74 and therefore wrote again to the O.F.E.C. under date of February 5, 1975 requesting a definite decision one way or the other on the request for reconsideration.

The only answer I have had since then is a telephone communication from the O.F.E.C. indicating that they feel this matter has been fully litigated in the Courts and that under those circumstances, they consider that the next move must be made by you. In other words, they apparently are standing by their original determination that you must make an election between accepting benefits under the V.A. or from the O.F.E.C..

The closest thing to a formal statement of the position of the O.F.E.C. is the letter sent to Congressman Bingham by the Deputy Commissioner of the Office of Workmen's Compensation Programs. This letter is dated March 10, 1975.

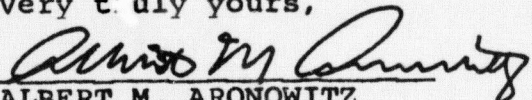
I would conclude, therefore, Mr. Teplitzky, that the U.S. Department of Labor will not reconsider their position on an Administrative Level. Therefore, any further relief would have to come from the Courts. Ordinarily, I would advise an Appeal within the Department of Labor if a decision had actually been forthcoming. However, since no formal decision has been issued and there has been merely a repetition of a previously expressed position from which you have appealed within the Department of Labor, you should proceed in the Courts.

For your use, I annex hereto copies of the following:

1. My letter of 8/19/74;
2. Letter of Office of Federal Employees' Compensation of 8/22/74;
3. My letter to the O.F.E.C. of 10/28/74 (annexed to which is a letter from the V.A. of 5/3/74);
4. My letter of 12/10/74;
5. Letter of Bureau of Employees' Compensation of 1/23/75;
6. My letter of 2/5/75;
7. Letter of Office of Workmen's Compensation Programs of 3/10/75.

The very best of good luck to you in your further efforts in this matter. If I can be of any further assistance in regard to the O.F.E.C. on the Administrative Level, please feel free to contact me.

Very truly yours,



ALBERT M. ARONOWITZ

AMA/sc
Encl. 7

c.c. Office of Workmen's Compensation Programs
1515 Broadway
New York, N.Y. 10036
Att: Mr. Arnold I. Bernstein,
Supervisory Claims Examiner